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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H-2007-177

SHEILA BERNADETTE LEMMONS, R.C.P.
P.O. Box 182
Valley Center, CA 92082

A C C U S A T I O N

Respiratory Care Practitioner License
No. 16201

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 12, 1993, the Respiratory Care Board issued Respiratory Care Practitioner License Number 16201 to SHEILA BERNADETTE LEMMONS, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 3710 of the Code states in pertinent part:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states:

“The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to

1 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
2 violate any provision or term of this chapter or of any provision of Division 2
3 (commencing with Section 500).

4 “ ...”

5 8. Section 3752 of the Code states in pertinent part:

6 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
7 made to a charge of any offense which substantially relates to the qualifications, functions, or
8 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this
9 article.”

10 9. California Code of Regulations (CCR), title 16, section 1399.370, states,
11 in pertinent part:

12 “For the purposes of denial, suspension, or revocation of a license, a crime or act
13 shall be considered to be substantially related to the qualifications, functions or duties of a
14 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
15 the functions authorized by his or her license or in a manner inconsistent with the public health,
16 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
17 following:

18 “(a) Violating or attempting to violate, directly or indirectly, or assisting
19 or abetting the violation of or conspiring to violate any provision or term of the
20 Act.

21 “ ...

22 “(c) Conviction of a crime involving driving under the influence or reckless
23 driving while under the influence.

24 “ ...”

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1 **COST RECOVERY**

2 10. Section 3753.5, subdivision (a) of the Code states:

3 “In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
7 estimate of costs where actual costs are not available, signed by the official custodian of the
8 record or his or her designated representative shall be prima facie evidence of the actual costs of
9 the investigation and prosecution of the case.”

10 11. Section 3753.7 of the Code states:

11 “For the purposes of the Respiratory Care Practice Act, costs of prosecution shall
12 include attorney general or other prosecuting attorney fees, expert witness fees, and other
13 administrative, filing, and service fees.”

14 12. Section 3753.1 of the Code states:

15 “(a) An administrative disciplinary decision imposing terms of probation may
16 include, among other things, a requirement that the licensee-probationer pay the monetary
17 costs associated with monitoring the probation.”

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Conviction of a Crime)

20 13. Respondent is subject to discipline under section 3750, as defined by
21 sections 3750, subdivisions (d) and (g) and 3752, of the Code, and California Code of Regulation
22 (CCR), title 16, section 1399.370, subdivisions (a) and (c), in that Respondent was convicted of a
23 crime that substantially relates to the qualifications, functions, or duties of a respiratory care
24 practitioner, and of driving under the influence or reckless driving while under the influence.
25 The circumstances are as follows:

26 A. On or about May 18, 2007, in the case entitled *People Of The State of*
27 *California v. Sheila B. Lemmons*, San Diego Superior Court Case No. CN227551,
28 Respondent was convicted on her own guilty plea of violating Vehicle Code section

1 23152(a) [driving under the influence of a narcotic] and placed on probation.

2 B. The circumstances of the arrest are as follows: On or about March 19,
3 2007, motorist L.R. observed a blue Jeep traveling southbound on Pala Temecula Road.
4 The Jeep was swerving across the double yellow lines and nearly striking oncoming
5 vehicles. At times the Jeep would drive on the dirt shoulder, come to a stop for a few
6 seconds at a time, and continue on while swerving and running off the road, crossing the
7 double yellow lines and nearly crashing head-on into oncoming traffic. Motorist L.R.
8 flagged down Deputy Sheriff J.V. at the Sheriff's Station on N. Lake Wohlford Road.

9 C. Deputy J.V. made an enforcement stop on Respondent's vehicle at the
10 parking entrance to the V.V. Casino. Deputy J.W. contacted and identified the driver of
11 the Jeep, from the driver's interim California drivers permit, as Respondent. Officer L.L.,
12 of the California Highway Patrol (CHP) took over the investigation in the case. He noted
13 that Respondent's eyes were bloodshot, she had unsteady gait, and her speech was
14 slurred. Respondent failed a series of field sobriety tests and was subsequently arrested
15 and transported to the Oceanside CHP area office. There, CHP officer W. P. conducted a
16 Drug Recognition Evaluation (DRE) and determined that Respondent was under the
17 influence of a narcotic analgesic, to wit: morphine.

18 D. Officer W.P. further noted that Respondent was lethargic, had diminished
19 abilities, appeared drowsy while seated, was very unsteady on her feet while standing, and
20 swayed side to side. In addition, he noted that Respondent's eyes were red and watery,
21 and slightly droopy. Respondent could not satisfactorily complete any of the standardized
22 field sobriety tests and her speech was slow and slurred.

23 E. Respondent stated that she takes large quantities of narcotics daily to
24 combat the constant pain in her right shoulder, and that she had taken all her medications
25 prior to being stopped that night. She also stated that she could not feel the effects of the
26 medications she had taken and that she could not remember driving poorly. Respondent,
27 however, admitted that she should not be driving.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime Involving Driving Under the Influence or Reckless Driving
3 While Under the Influence)

4 14. Respondent is further subject to disciplinary action under sections 3750, as
5 defined by section 3750, subdivisions (d) and (g), of the Code, and CCR, title 16 section
6 1399.370, subdivision (c), in that she was convicted of a crime involving driving under the
7 influence or reckless driving while under the influence, as more particularly described in
8 paragraph 13, above, which is incorporated by reference as if fully set forth herein.

9 **DISCIPLINARY CONSIDERATIONS**

10 15. To determine the degree of discipline, if any, to be imposed on
11 Respondent, Complainant alleges that on or about November 24, 2006, Respondent was arrested
12 for driving under the influence of a narcotic analgesic (Case No. CN227687). The circumstances
13 of the arrest are as follows:

14 A. On or about November 24, 2006, motorist C.M. observed a blue Jeep
15 traveling westbound on Lake Wohlford Road west of Woods Valley Road. The Jeep
16 was swerving across the double yellow lines nearly striking oncoming vehicles. The Jeep
17 made a right turn onto northbound Valley Center Road where it swerved and ran off the
18 road several times before it stopped at the Rincon Fire Station. Motorist C.M. took down
19 the Jeep's license plate number and flagged down Sheriff Deputy D.W.

20 B. Sheriff Deputy D.W. followed the Jeep as it turned into J.'s Mexican
21 Restaurant on SR-76. Deputy D.W. contacted and identified the driver of the Jeep, from
22 the driver's California drivers license, as Respondent. Deputy D.W. noted that
23 Respondent's eyes were glassy and appeared to be under the influence of alcohol or
24 drugs.

25 D. CHP Officer L.L. took over the investigation in the case. He noted that
26 Respondent's eyes were bloodshot, her speech was slurred, and her gait was unsteady.
27 While existing her vehicle, Respondent stumbled losing her balance. Respondent failed a
28 series of field sobriety tests and was subsequently arrested and transported to the

Oceanside CHP area office. CHP Officer T.F. conducted a DRE and determined that Respondent was under the influence of a narcotic analgesic.

E. While at the Oceanside area office, Officer T.F. noted that Respondent was very lethargic and sluggish. Her speech was slurred, eyes were watery, and her eyelids were droopy. He further noted that Respondent's pupils were dilated and slow to react to light and she appeared to be very dehydrated and very tired. Respondent failed the standardized field sobriety tests.

F. Respondent stated that she had a right rotator cuff surgery and suffers from chronic pain. She further stated that she takes Norco, Morphine, and Hydroxyzine. Respondent was transported and book into the V. Detention Facility for violation of Vehicle Code section 23152(a).

G. On or about May 18, 2007, in the case entitled *People Of The State of California v. Sheila B. Lemmons*, San Diego Superior Court Case No. CN227687 was dismissed when Respondent pled guilty to violating Vehicle Code section 23152(a) in Case No. CN227551, as more particularly described in paragraph 14, above, which is incorporated by reference as if fully set forth herein.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking Respiratory Care Practitioner License Number 16201 heretofore
5 issued to SHEILA BERNADETTE LEMMONS, R.C.P.

6 2. Ordering Sheila Bernadette Lemmon's R.C.P. to pay the Respiratory Care
7 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
8 costs of probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: March 13, 2008

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15 Original signed by Colleen Whitestine for:
16 STEPHANIE NUNEZ
17 Executive Officer
18 Respiratory Care Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

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